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(286)

HIGH COURT OF CHHATTISGARH

Writ Petition No. 1865 of 2004

Petitioner: Benedict Tigga

Versus

Respondents State of Chhattisgarh and others.

Post for order 4 -7-2007

Sd/-
Satish K. Agnihotri
Judge

3 -7-2007

(207)

HIGH COURT OF CHHATTISGARH: BILASPUR

WRIT PETITION NO. 1865 OF 2004

PETITIONER

Benedict Tigga, Son of Late Shri Paulus Tigga, aged about 52 years, working as a Company Commandant (Home Guard), Baikunthpur, Dist. Korea (CG), resident of Home Guard Camp, Baikunthpur, Dist. Korea, CG.

Versus

RESPONDENTS

1) State of Chhattisgarh through the Secretary, Ministry of Home, D.K.S. Bhawan, Raipur, District: Raipur, CG.

2) Joint Secretary, State of Chhattisgarh, Home Police Department, D.K.S. Bhawan, Raipur, Dist. Raipur, CG.

3) Director General of Police (Home Guard), Raipur, Dist: Raipur, CG.

4) Divisional Commandant (Home Guard), Bilaspur, District: : Bilaspur, CG.

5) District Commandant, Raigarh, District: Raigarh (CG).

6) District Commandant (Home Guard), Baikunthpur, Dist: Korea, CG.

7) Shri Shidhwaj Singh Baghel, District Commandant, Durg, Dist: Durg, CG.

8) Shri Sunder Singh Natem, District Commandant, Rajnandgaon, Dist. Rajnandgaon, CG.

9) Shri Leous Toppo, District Commandant (Home Guard), Dantewada, Distt: Dantewada, CG.

(Writ Petition under Article 226/227 of the Constitution of India)

SB: Hon'ble Shri Justice Satish K. Agnihotri

PRESENT"

Shri V.K. Pandey, counsel for the petitioner.
Shri V.V.S Murthy, Dy. Advocate General with Smt. Anju Ahuja, Dy. Govt. Advocate for respondents No. 1 to 6/State.
Shri Yashwant Singh Thakur, counsel for respondents No. 7 to 9.

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(208)

ORDER
(Passed on 4 -7-2007)

Petitioner, by this petition, seeks quashing of the order dated 23-6-2004 (Annexure P/1) whereby and whereunder the respondents No. 7, 8 and 9 have been promoted to the post of District Commandant (home guards).

2) The indisputable facts, in nutshell, are that the petitioner along with the respondents No. 7 to 9 were working as Company Commandant (home guards). In the seniority list as on 1-4-2003 respondents No. 8 and 9 were shown as juniors to the petitioner and the respondent No.7 was shown as senior to the petitioner. The petitioner along with the respondents No. 7 to 9 were considered for promotion in the Departmental Promotion Committee (for short, "DPC") held on 26-5-2004 and the names of the respondents No. 7 to 9 were recommended for promotion. In the case of the petitioner, it was observed that though the petitioner was graded as "B" in the annual confidential report of the year 2003, but the DPC graded him as "C" without assigning any reason. Accordingly, the respondents No. 7 to 9 were found more suitable for promotion. The criteria of the promotion was seniority-cum-suitability.

3) Learned counsel appearing for the petitioner would submit that there was no reason to grade the petitioner as "C". For the last five years, the petitioner was graded two times "A", one time A+ and two times "B" whereas the respondent No.7 was graded two times "A" and three times "B". The respondent No.7 was graded four times "A" and one time "B". The DPC without assigning any reason has graded the petitioner as "C" in the annual confidential report of the year 2003 when he was assessed as "B" grade. It was, further contended that evaluation system of the DPC was discriminatory as the DPC has exercised its power for fresh evaluation only in case of the petitioner. The DPC further held that in case of the petitioner, adverse remark was made in the

209

assessment year 2003 and the same was communicated to him, therefore, in that view also the petitioner was found unsuitable. Though the petitioner was communicated the adverse remark, but the reply of the petitioner was not considered and no order was passed before the DPC meeting. Subsequently, the petitioner was imposed a minor punishment of 'censure' which does not come in the way of promotion. The DPC ought to have adopted the sealed cover procedure.

4) Shri V.V. S. Murthy, learned Dy. Advocate General appearing for the respondents No. 1 to 6/State, per contra, would submit that there was adverse remark against the petitioner in the annual confidential report of the year 2003 which was communicated to him vide letter dated 6-6-2003 (Annexure R/2). There were certain criminal cases also pending against the petitioner in various courts of law. The petitioner overstayed on medical leave and as such violated the conditions of Rule 7 of the Chhattisgarh Civil Services Conduct Rules 1963. It was further contended that a Departmental Enquiry was initiated against the petitioner against alleged mis-conduct and a charge-sheet was issued to the petitioner on 7-11-2003 on several allegations of irregularities, in-subordination etc.

5) Shri Yashwant Singh Thakur, learned counsel appearing for respondents No. 7 to 9 supported the submission made by learned counsel appearing for respondents No. 1 to 6/State.

6) The main question for consideration is as to whether the sealed cover procedure ought to have been adopted in case of pendency of communication of adverse remark. On receipt of reply, the order of imposition of censure was awarded after Meeting of the DPC was held earlier. It is admitted position that punishment of imposition of 'censure' is a minor punishment and it does not come in the way of promotion of an employee to the higher post. Thus,

210

grading of the petitioner by the DPC as "C" on the basis of adverse remark, which was though communicated, but the DPC did not wait for order on reply of the petitioner, which resulted into imposition of censure, was illegal and deserves to be deprecated.

7) The Supreme Court in the matter of **Anil Katiyar (Mrs) Vs. Union of India and others**[1] at para 4 observed as under:

> "4. Having regard to the limited scope of judicial review of the merits of a selection made for appointment to a service or a civil post, the Tribunal has rightly proceeded on the basis that it is not expected to play the role of an appellate authority or an umpire in the acts and proceedings of the DPC and that it could not sit in judgment over the selection made by the DPC unless the selection is assailed as being vitiated by mala fides or on the ground of it being arbitrary. It is not the case of the appellant that the selection by the DPC was vitiated by mala fides."

8) The Supreme Court in the matter of **Union of India and others Vs. K.V. Jankiraman and others**[2] observed as under:

> "The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue

[1] (1997) 1 SCC 280
[2] (1991) 4 SCC 109

211

charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure."

9) The Supreme Court in the matter of **Badrinath Vs. Government of Tamil Nadu and others,**[3] on the question of applicability of general questions to consequential order, at paras 27 and 47 observed as under:

"27. This flows from the general principle applicable to "consequential orders". Once the basis of a proceeding is gone, may be at a later point of time by order of a superior authority, any intermediate action taken in the meantime — like the recommendation of the State and by the UPSC and the action taken thereon — would fall to the ground. This principle of consequential orders which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders. In other words, where an order is passed by an authority and its validity is being

[3] (2000) 8 SCC 395

212

reconsidered by a superior authority (like the Governor in this case) and if before the superior authority has given its decision, some further action has been taken on the basis of the initial order of the primary authority, then such further action will fall to the ground the moment the superior authority has set aside the primary order"

"47. Every officer has a right to be considered for promotion under Article 16 to a higher post subject to eligibility, provided he is within the zone of consideration. But the question is as to the manner in which his case is to be considered. This aspect is a matter of considerable importance in service jurisprudence as it deals with "fairness" in the matter of consideration for promotion under Article 16. We shall therefore refer to the current legal position".

10) GAD Circular No. F 5-4/98/9/F, dated 16-6-1999 provides for evaluation of grading by the DPC only in case there are contradictory entries in the annual confidential reports. The circular reads as under:

"विषय :– गोपनीय चरित्रावली में मतांकन ।

सन्दर्भ : सा.प्र.वि. का ज्ञाप. क. 580/2982/94/9/एक, दि. 6.9.94 एवं सा.प्र.वि. का ज्ञाप क. एफ 5–4/98/9/1, दि. 13.1.99.

सामान्य प्रशासन विभाग के संदर्भित ज्ञाप द्वारा यह स्पष्ट किया गया है कि जब सक्षम अधिकारी द्वारा संपूर्ण प्रतिकूल टीप विलोपित करने का निर्णय लिया जाता है, तब सामान्यतः स्वीकारकर्ता अधिकारी द्वारा स्वीकार की गई श्रेणीं को अंतिम मान्य किया जायेगा, परन्तु यदि प्रविष्टि का कुछ भाग बचता है, तो उसके आधार पर मूल्यांकन कर श्रेणी विभागीय पदोन्नति समिति द्वारा निर्धारित की जायेगी।

2. शासन के समक्ष कुछ ऐसे प्रकरण आये हैं, जिनमें यह जानकारी चाही गई है कि यदि शासकीय सेवकों के गोपनीय प्रतिवेदन में प्रतिवेदक अधिकारी द्वारा अंकित श्रेणी से समीक्षक या स्वीकृतकर्ता

(213)

अधिकारी द्वारा असहमति व्यक्त कर निम्न श्रेणी का मत दिया हो, तो ऐसी स्थिति में कौन सी श्रेणी स्वीकार की जाएगी।

3. गोपनीय प्रतिवेदन में वर्गीकरण के आधार पर शासकीय सेवक की पदोन्नति के संबंध में विचार किया जाता है। पदोन्नति के मामलों में विभागीय पदोन्नति समिति द्वारा शासकीय सेवक के पिछले वर्षों के गोपनीय प्रतिवेदन पर विचार कर अनुशंसा की जाती है। यदि किसी गोपनीय प्रतिवेदन में विरोधाभासी प्रविष्टियों हों, तो उन पर विचार कर अंतिम मूल्यांकन करने का दायित्व एवं अधिकार पदोन्नति समिति का है। अतः पदोन्नति (क्रमोन्नति भी) के मामलों में विभागीय पदोन्नति समिति द्वारा निर्धारित श्रेणीकरण ही अंतिम रुप से मान्य किया जाना चाहिए।"

11) In view of the well settled principles of law enunciated by the Supreme Court in various cases (supra), this Court, despite having limited scope of judicial review of the merits of selection made by the DPC, can exercise its jurisdiction, if it is found arbitrary and unreasonable. Applying the above well settled principles of law to the facts of the present case, it is evident that the evaluation done by the DPC in case of the petitioner by down grading from grade "B" to grade "C" in the annual confidential report of the year 2003, is unreasonable and not inconsonance with the Circular dated 16-6-1999 which provides for evaluation of grading by the DPC only in case of contradictory entries made in the report.

12) I have perused the departmental proceedings. The second contention that adverse remark was communicated and a charge-sheet was issued against the petitioner. The DPC ought to have resorted to the sealed cover procedure as held by the Supreme Court in the matter of **Union of India and others Vs. K.V. Jankiraman and others (supra)** followed subsequently in other cases. The DPC has not resorted to the sealed cover procedure in the case of the petitioner. The petitioner was later on punished with a minor punishment i.e. 'censure', which admittedly does not come in the way of promotion. Thus, irregularity and arbitrariness are writ large.

(214)

13) In view of the foregoing, the petition is allowed. The respondents No. 1 to 6/authorities are directed to hold DPC as on 26-5-2004 considering the cases of the petitioner and other respondents for promotion, in accordance with law.

14) In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju